114-15

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1028.

MARY ANN M. PRATT, APPELLANT,

vs.

ALEXANDER RAMSEY, A. S. PADDOCK, G. L. GODFREY, A. B. CARLETON, J. R. PETTIGREW, E. D. HOGE AND JOHN S. LINDSAY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED OCTOBER 9, 1884.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

a

Supreme Court, Utah Territory.

MARY ANN M. PRATT, Appellant,
vs.
ALEXANDER RAMSEY *et al.*, Respondents.

Transcript.

Bennett, Harkness & Kirkpatrick, att'ys for appellant.
Rosborough & Merritt, Arthur Brown, and Sheeks & Rawlins, counsel for appellant.
Dickson & Varian, and Hoge & Jonasson, att'ys for respondents.

Copy served Jan'y 9th, 1884.

DICKSON & VARIAN,
Att'ys for Resp'ts.

Filed January 9th, 1884.

E. T. SPRAGUE,
Clerk of Supreme Court.

1 *Complaint.*

Supreme Court, Territory of Utah.

MARY ANN M. PRATT, Plaintiff,
vs.
ALEXANDER RAMSEY, A. S. PADDOCK, G. L. GODFREY, A. B. CARLETON, J. R. PETTIGREW, E. D. HOGE, and JOHN S. LINDSAY, Defendants. } Transcript.

The plaintiff above named complains of the defendants, and on information and belief alleges, that after the 22d day of March, 1882, and prior to the first day of July, 1882, under the provisions of section 9 of an act of the Congress of the United States, approved March 22d, 1882, and entitled "An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," the President of the United States, by and with the consent of the Senate of the United States, duly appointed the defendants, Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, and J. R. Pettigrew, to perform the duties mentioned in
2 said section, to be performed by a board of five persons, and by virtue of said appointment, they became a board of five persons with the powers named in said section.

And, on information and belief, the plaintiff alleges that, after such appointment, and prior to the first day of August, 1882, the last named five defendants, duly qualified as such appointees, came to Utah and organized as a board, and entered upon the exercise of the powers and the discharge of the duties granted and imposed by said section 9 of said act of Congress. That after said organization, said five defendants were commonly called "commissioners," and are hereinafter referred to and called the "Board of Commissioners."

That said Board of Commissioners afterward ordered, directed and supervised a registration of the voters of the Territory of Utah, for the general election in said Territory, to be held on the seventh day

of November, 1882, for the election of a delegate for said Territory to the Forty-eighth Congress, and for such other elections as might be held prior to another registration of voters of said Territory; and on or about the tenth day of August, 1882, the said Board of Commissioners made and published rules providing for said registration, for the appointment of registration officers and judges of election, and the canvas and return of the votes; directed said registration to be made during the week commencing on the second Monday of September, 1882, and, among other rules, wilfully and maliciously made and published the following:

"Rule I.

"There shall be appointed one registration officer for each county, and one deputy registration officer for each precinct thereof.

"Rule II.

"Such registration officer shall, on the second Monday of September next, proceed by himself and his deputies in the manner following: The registration officer of each county shall procure
3 from the clerk of the county court the last preceding registry list on file in his office, and shall, by himself or his deputies, require of each person whose name is on said list, or who applies to have his name placed on said list, to take and subscribe the following oath or affirmation:

"TERRITORY OF UTAH, } *ss:*
County of ——— }

"I, ——— ———, being first duly sworn (or affirmed), depose and say: That I am over twenty-one years of age, and have resided in the Territory of Utah for six months, and in the precinct of ——— one month immediately preceding the date hereof, and (if a male) am a native born or naturalized (as the case may be) citizen of the United States, and a tax payer in this Territory, (or if a female) I am native born, or naturalized, or the wife, widow or daughter (as the case may be) of a native born or naturalized citizen of the United States, and I do further solemnly swear (or affirm), that I am not a bigamist nor a polygamist; that I am not a violator of the laws of the United States prohibiting bigamy or polygamy; that I do not live or cohabit with more than one woman in the marriage relation, nor does any relation exist between me and any woman which has been entered into or continued in violation of the said laws of the United States prohibiting bigamy or polygamy, (and if a woman) that I am not the wife of a polygamist, nor have I entered into any relation with any man in violation of the laws of the United States concerning polygamy or bigamy.

"Subscribed and sworn to before me, this ——— day of ——— 1882.

———,
"*Registration Officer,* ——— *Precinct.*

"And said registration officer, or his deputies, shall add to said lists the names of all qualified voters in such precinct whose names are not on the list, upon their taking and subscribing to the
4 aforesaid oath, and the said registration officer shall strike from said lists the names of said persons who fail or refuse to take said oath, or have died or removed from the precinct, or are disqualified as voters under the act of Congress approved March 22d, A. D. 1882, entitled 'An Act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes:' *Provided*, That the action of any registration officer may be revised and reversed by this commission, upon a proper showing: *And provided, further*, That if the registration officer be unable to procure the registration list from the office of the clerk of the county, or if the same have been lost or destroyed, the said officer and his deputies shall make a new registry list in full of all legal voters of each precinct of the county, under the provisions of these rules."

That said Board of Commissioners also, by rules, provided for the appointment of and appointed three judges of election for each election precinct in said Territory.

And on information and belief, the plaintiff alleges that the defendant, E. D. Hoge, was appointed registration officer for the county of Salt Lake, in said Territory of Utah, and the defendant, John S. Lindsay, was appointed deputy registration officer for the third election precinct of the city of Salt Lake, in said county, and that each accepted the appointment, duly qualified, and respectively acted throughout the said registration as such registration and deputy registration officer.

And the plaintiff alleges, that on the second Monday of September, 1882, the defendant, John S. Lindsay, as deputy registration officer for said third precinct in the city and county of Salt Lake, aforesaid, acting under the direction of the other defendants, commenced registering the voters of said precinct and making a registration list of such voters, and continued daily therein until the evening of Saturday of the same week, when the registration was closed.

5 And the plaintiff alleges that she is a native citizen of the United States of America, and prior to the 22d day of March, 1882, was more than twenty-one years of age; that she has resided continuously in the Territory of Utah for more than thirty years, and resided continuously in the third precinct of Salt Lake City, in said Territory, for more than two years last past; that she has, for more than five years prior to the November election in 1882, lawfully exercised the rights and enjoyed the privileges of the election franchise in said Territory, and has, for more than five years last past, owned taxable property and been a tax payer in said Territory, and that her name was on the last registration list of the voters of the third precinct, made prior to the second Monday of September, 1882.

And the plaintiff alleges that she is not, and never has been, a bigamist or a polygamist; that she is the widow of Orson Pratt, Sen., who died prior to the 22d day of March, 1882, after a contin-

uous residence in said Territory of more than thirty years, and that since the death of her said husband she has not cohabited with any man.

And the plaintiff alleges that on the 13th day of September, 1882, she personally went before the defendant, John S. Lindsay, then acting as deputy registration officer in and for the third precinct in Salt Lake City, aforesaid, and signed and presented to said defendant, and offered to verify, and requested the said defendant to take and certify plaintiff's oath to the following affidavit, to wit:

TERRITORY OF UTAH, }
County of Salt Lake, } *ss:*

I, Mary Ann M. Pratt, being first duly sworn, depose and say: I am over twenty-two years of age, and have continuously resided in the Territory of Utah for more than six months, to wit, more than thirty years last past, and I have resided in the third precinct of Salt Lake City more than six months next preceding the date hereof, and still reside therein; I am a native born citizen of the United States of America, and am the widow of Orson Pratt, Senr., late deceased, who died prior the 22d day of March, 1882, and after a continuous residence in said Territory of more than thirty years. My name is on the last registry list of voters of said precinct, and I am a tax payer in said Territory. I am not and never have been a bigamist or polygamist and have not on or since March 22, 1882, cohabited with any man.

MARY ANN M. PRATT.

Subscribed, sworn to before me, this thirteenth day of September, A. D. 1882.

And at the same time the plaintiff requested the said defendant, John S. Lindsay, to put plaintiff's name on the registry list of voters of said precinct, and to register her as a voter therein. That the said defendant, John S. Lindsay, acting under the directions of the other defendants, wilfully and maliciously refused to receive said affidavit or to swear plaintiff thereto, or to register her as a voter of said precinct, but on the contrary wilfully and maliciously struck plaintiff's name off the list of registered voters of said precinct, and left her name off the list of voters of said precinct, made at said registration.

That afterwards, before the close of said registration, and on the 14th day of September, 1882, the plaintiff presented a duplicate of said last-named affidavit to the defendant, E. D. Hoge, then acting as county registration officer for said county of Salt Lake, and informed him of the ruling and action as aforesaid of the defendant, John S. Lindsay, and requested the defendant, E. D. Hoge, to correct and reverse said ruling, and to instruct the defendant, John S. Lindsay, to swear plaintiff to said affidavit and register her as a voter, and the said defendant, E. D. Hoge, wilfully and maliciously refused to correct or change said ruling and action, and approved and affirmed the same.

That on the 16th day of September, 1882, the plaintiff presented to said Board of Commissioners a duplicate of said last-named affidavit, and informed them of the action and ruling of the defendants, John S. Lindsay and E. D. Hoge, and requested said
7 board to reverse and correct said rulings and action, and to direct that plaintiff's oath to said affidavit be taken, and that she be registered as a voter of said precinct, and the said Board of Commissioners wilfully and maliciously refused to correct or change said rulings, and affirmed and approved the same, and said last-named ruling was made before the close of the registration in said precinct, and when there was still time for plaintiff to have registered before the close of the registration.

And, on information and belief, the plaintiff alleges that the defendants all knew that, unless the plaintiff's name appeared on the registration list then being made of the voters of said precinct, her vote would not be received at the election to be held November 7, 1882, or at any election until after another registration of voters.

That at the election held throughout the Territory of Utah, on the 7th of November, 1882, for the election of a delegate for the Territory of Utah for the Forty-eighth Congress, the plaintiff went before the judges of election in said third precinct of the city of Salt Lake, in the county of Salt Lake, at the place where the votes in said precinct were being taken, and offered to vote at said election, and tendered and offered to take the same affidavit, but the said judges refused to receive her vote, on the ground that she was not registered as a voter in said precinct.

And, on information and belief, the plaintiff alleges that the defendants, and each of them, intending to wrongfully deprive the plaintiff of the elective franchise in said Territory, wilfully and maliciously, by the acts and in the manner aforesaid, refused the plaintiff registration as a voter, at the said registration commenced on the second Monday of September, 1882, and deprived the plaintiff of the right to vote at the election held in said Territory on the 7th day of November, 1882, and at all elections under said registration, whereby plaintiff has sustained damage to the amount of twelve hundred dollars.

Wherefore the plaintiff prays judgment against the defend-
8 ants for the sum of twelve hundred dollars and costs of suit.

BENNETT, HARKNESS & KIRKPATRICK,
Attorneys for Plaintiff.
ROSBOROUGH & MERRITT,
ARTHUR BROWN,
SHEEKS & RAWLINS,
Of Counsel for Plaintiff.

(Duly verified.)
Filed June 30, 1883.

Demurrer.

(Title.)

The defendants in the above entitled action demur to the complainant therein, on the ground that—

1. Said complaint does not state facts sufficient to constitute a cause of action.

E. T. SPRAGUE,
Defendants' Att'y.

(Duly verified and filed.)

Order on Demurrer.

(Title.)

The arguments on the demurer of the defendants herein having been heard, it is now ordered and adjudged that the demurrer be, and the same is hereby, sustained, and that the defendants have judgment against the plaintiff for the costs of this action, unless the plaintiff amend her complaint and pay the costs of the demurrer.

9 And the plaintiff, by counsel, in open court, having declined to amend, and elected to abide by her complaint, it is ordered that judgment for the defendants be entered.

Dated Dec. 10th, 1883.

By the court:

JOHN A. HUNTER, *Judge.*

At the same time the plaintiff, by counsel, duly excepted to the ruling and decision of the court on said demurrer, and the exception is allowed.

JOHN A. HUNTER, *Judge.*

(Filed Dec. 10, 1883.)

Judgment.

(Title.)

In this action the defendants having demurred to the complaint of plaintiff herein, and said demurrer having been argued and submitted to the court at the September term, 1883, thereof, and the same having now been fully considered by the court, the court now sustains said demurrer, and plaintiff, by her attorneys, Messrs. Bennett, Harkness & Kirkpatrick and others, electing to stand upon the said complaint and declining to amend the same—

On motion of Dickson & Varian, of counsel for defendants, it is ordered, adjudged and decreed that plaintiff take nothing by her said suit, and that the complaint therein be dismissed.

And it is further adjudged and decreed that said defendants recover of and from said plaintiff their costs on this behalf expended and taxed at $10.00.

Filed Dec. 10, 1883.

10 *Notice of Appeal.*

(Title.)

To the above named defendants:

Please take notice that the plaintiff in this action appeals to the supreme court of Utah Territory from the judgment rendered in

this action on the 10th day of December, 1883, in favor of the defendants and against the plaintiff, and from the whole of said judgment.

Dated December 14th, 1883.

BENNETT, HARKNESS & KIRKPATRICK,
Attorneys for Plaintiff.

(Endorsed :) Service of a copy admitted, Dec. 14th, 1883.

DICKSON & VARIAN,
Defendants' Att'ys.

Filed Dec. 14, 1883.

Undertaking.

(Title.)

The above-named plaintiff having appealed to the supreme court of Utah Territory from the judgment herein rendered against her and in favor of the defendants on the 10th day of December, 1883: now, therefore, the undersigned, as sureties, do jointly and severally undertake and promise that the appellant will pay all damages and costs which may be awarded against her on the appeal.

Dated December 15th, 1883.

A. MILTON MUSSER. [SEAL.]
DAVID JAMES. [SEAL.]

TERRITORY OF UTAH, } ss :
Salt Lake County, }

A. Milton Musser and David James, being each duly sworn, doth each for himself depose and say: I am a resident of Salt Lake
11 City, Utah; am one of the sureties named in the above undertaking, and I am worth the sum of four hundred dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

A. MILTON MUSSER.
DAVID JAMES.

Subscribed and sworn to before me, December 15th, 1883.

[SEAL.] E. T. SPRAGUE,
Clerk of Supreme Court.

Filed Dec. 15th, 1883.

We certify the foregoing is a full, true, and correct transcript of the record in this action.

BENNETT, HARKNESS & KIRKPATRICK,
Att'ys for Appellant.
DICKSON & VARIAN,
Att'ys for Resp'ts.

12 FRIDAY, *February 1st*, A. D. 1884.

A session of the supreme court of Utah Territory was held this day, beginning at ten o'clock a. m., pursuant to adjourn-

ment. Present and presiding, Hon. John A. Hunter, chief justice; present, also, Hon. P. H. Emerson, associate justice, and Hon. S. P. Twiss, associate justice; the clerk, marshal, and members of the bar. The court was duly opened.

* * * * * * * *

MARY ANN M. PRATT, Appellant,
vs.
ALEX. RAMSEY *et al.*, Respondents. } From 3d Dist.

This cause coming on regularly for hearing, was, by counsel of the respective parties, submitted on briefs, and by the court taken under advisement.

13 WEDNESDAY, *June 25th*, A. D. 1884.

A session of the supreme court of Utah Territory was held this day, beginning at ten o'clock a. m., pursuant to adjournment. Present and presiding, the Hon. John A. Hunter, chief justice; present, also, the Hon. Philip H. Emerson, associate justice, and the Hon. Stephen P. Twiss, associate justice; the clerk, marshal, and members of the bar. Court was duly opened.

* * * * * * * *

MARY ANN M. PRATT, Appellant,
vs.
ALEXANDER RAMSEY, A. S. PADDOCK, G. L. GODFREY, A. B. Carlton, J. R. Pettigrew, E. D. Hoge, and John S. Lindsay, Respondents. } From 3d Dist.

This cause having been heretofore submitted, and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged that the judgment of the district court therein be, and the same is hereby, affirmed, and that respondents have and recover of and from appellant the sum of twenty-eight and $\frac{31}{100}$ dollars costs.

Thereupon said appellant, by her counsel, prayed the allow-
14 ance of an appeal from this judgment to the Supreme Court of the United States, and asked that the amount of a bond to be given thereon be now fixed; and it is hereby ordered, counsel of respondents being present and not objecting, that said appeal be nd is allowed, and the penal sum of a bond to be given thereon be and is fixed at $250.00.

15 *Assignments of Error.*

MARY ANN M. PRATT, Appellant,
vs.
ALEXANDER RAMSEY, A. S. PADDOCK, G. L. GODFREY, A. B. CARLTON, J. R. Pettigrew, E. D. Hoge, and John S. Lindsay, Appellees.

The appellant having appealed to the Supreme Court of the United States, assigns errors on the record herein as follows:

1. The court erred in affirming the judgment of the district court rendered on demurrer to the complaint, and thereby holding the

complaint did not state a cause of action, and in not holding the complaint did state a cause of action, and reversing the judgment of the district court.

2. The ruling on the demurrer and the judgment of the district court thereon, and the judgment of the supreme court of Utah, necessarily affirm the complaint does not state a cause of action; whereas the complaint does state all the facts necessary to a complete cause of action.

It shows that at the time of the registration of voters in September, 1882, the plaintiff, Mary Ann M. Pratt, was a qualified voter, and had a right to register as such, and to vote at the November
16 election of the same year; that her name was on the prior registration list, and should, by law, have remained there, unless removed after challenge and a hearing, as provided by law;

That she offered the proofs required by law (if any proofs were required) to have her name put on, or remain on, the registration list of her precinct.

That she was a legal voter, and had the right to vote at the November election in 1882.

That she was deprived of her lawful right to register, and also to vote, by the illegal acts of the defendants, as follows:

In erasing her name from the registration list at a time when they had no jurisdiction or lawful right to do so.

In refusing to leave her name on the registration list, or to put her name on said list, when she offered all the proofs and did all the acts required by law for that purpose.

In usurping legislative powers by prescribing a registration oath unauthorized by law, and refusing to register the plaintiff, Mary Ann M. Pratt, unless she would subscribe and take said oath.

17 In requiring said plaintiff, as a requisite to registration, to subscribe and take an unauthorized oath, which gave an *ex post facto* interpretation to a penal act, and which in its terms consisted largely of legal conclusions, and was so ambiguous as to be unintelligible.

The judgment herein having been rendered without any opinion, a more specific assignment of errors cannot be made.

F. S. RICHARDS &
C. W. BENNETT,
Counsel for Appellants.

Filed June 30, 1884.
E. T. SPRAGUE, *Clerk.*

18 The United States of America to Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, J. R. Pettigrew, E. D. Hoge, and John A. Lindsay, Greeting:

You are cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, District of Columbia, on the 2d Monday of October next, pursuant to an appeal allowed by the supreme court of the Territory of Utah on the 25th day of June, 1884, and duly entered on the records of said court, wherein Mary Ann M. Pratt is appellant and you are the

appellees, to show cause, if any there be, why the judgment rendered in said action by the supreme court of the Territory of Utah, on the 25th day of June, 1884, against the said appellant, should not be reversed and the errors therein corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. John A. Hunter, chief justice of the supreme court of Utah Territory, this 28th day of June, A. D. 1884.

JOHN A. HUNTER,
Chief Justice.

19 A copy of the within citation was personally served on us, and the original exhibited, this 30th day of June, 1884, and due service is admitted.

DICKSON & VARIAN,
Att'ys for Appellees.

[Endorsed:] Mary Ann M. Pratt *vs.* Alexander Ramsey *et al.*, appellees. Citation and admission of service. Filed June 30, 1884. E. T. Sprague, clerk.

20 Know all men by these presents, that we, Elias Morris and Theodore McKean, both of Salt Lake City, in the county of Salt Lake and Territory of Utah are held and firmly bound, jointly and severally, unto Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carlton, J. R. Pettigrew, E. D. Hoge, and John S. Lindsay, in the full and just sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carlton, J. R. Pettigrew, E. D. Hoge, and John S. Lindsay, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately, at a term of the supreme court of the Territory of Utah, held at the city of Salt Lake, in the county of Salt
21 Lake and Territory of Utah, in a suit depending in said court on appeal from the district court of the third judicial district of said Territory, between Mary Ann M. Pratt, as plaintiff and appellant, and the said Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carlton, J. R. Pettigrew, E. D. Hode, and John S. Lindsay, as defendants and respondents, judgment was rendered against the said Mary Ann M. Pratt and in favor of said respondents, in said court, at said term, and on the twenty-fifth day of June, 1884, in substance affirming the judgment of said district court, with costs, and the said Mary Ann M. Pratt, having on the same day, in said supreme court of said Territory, prayed the allowance of an appeal to the Supreme Court of the United States, and the said appeal having been allowed, and the said supreme court having fixed the amount of the bond to be given for damages and costs at the sum of two hundred and fifty dollars:

22 Now, the condition of the above obligation is such, that if the said Mary Ann M. Pratt shall prosecute her appeal to

effect, and answer all damages and costs if she shall fail to make her plea and appeal good, then the above obligation to be void; else to remain in full force and effect.

ELIAS MORRIS. [SEAL.]
THEO. McKEAN. [SEAL.]

Sealed and delivered in the presence of—
ANGUS M. CANNON.
WILLIAM W. TAYLOR.

Approved by me, this 28th day of June, A. D. 1884.
JOHN A. HUNTER,
Chief Justice Supreme Court Utah Territory.

[Endorsed:] Mary Ann M. Pratt *vs.* Alexander Ramsey *et al.* Supersedeas bond. Filed June 30, 1884. E. T. Sprague, clerk.

23 No opinion has been filed.

E. T. SPRAGUE, *Clerk.*

TERRITORY OF UTAH, } *ss:*
County of Salt Lake, }

I, E. T. Sprague, clerk of the supreme court of said Territory of Utah, in pursuance of a certain appeal allowed by said court, do return hereto attached a transcript of the record and proceedings, assignment of errors, and of the bond on appeal, with a citation and proof of service thereof, all in and of said court in a certain cause in said citation described, to the Supreme Court of the United States, and I hereby certify that said transcript of the record and proceedings, assignment of errors, and said bond, so attached, is a true, full, correct, and complete copy of the several originals thereof on file or of record in my office.

Witness my hand and the seal of said supreme court of Utah Territory, at Salt Lake City, this 2d day of July, A. D. 1884.

[SEAL.]
E. T. SPRAGUE,
Clerk of Supreme Court of Utah Territory.

Endorsed on cover: Utah Territory supreme court. No. 1028. Mary Ann M. Pratt, appellant, *vs.* Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, J. R. Pettigrew, E. D. Hoge, and John S. Lindsay. Filed October 9, 1884.